IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 172 OF 2001

Navneet Balkrishna Naidu ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

ALONGWITH

CRIMINAL APPEAL NO. 150 OF 2001

Laxmi Balkrishna Naidu ..... Appellant

versus

The State of Maharashtra ... Respondents.

.....

Shri S.P.Mundargi with Ganesh gole for the appellant.
Mrs. P.H.Kantharia APP for State.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 26TH APRIL, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Criminal Appeal No. 150 of 2001 is filed by the original accused no.2 Laxmi Balkrishna Naidu against the order of conviction passed by the learned Additional Sessions Judge, Pune on 20-02-2001 in Sessions case No.35 of 1998 whereby the learned Judge

convicted the appellant under section 304 B read with 34 of IPC to suffer seven years of imprisonment and a fine of Rs. 2,000/- and though the learned Judge found the accused guilty of offence under section 498 read with 34 of IPC, no separate sentence was recorded.

2. Criminal Appeal No.172 of 2001 is filed by the original accused No.1 Navneet Balkrishna Naidu who, in the same Sessions case by the said order, was convicted and sentenced to life imprisonment by the learned trial Judge under section 302 IPC for committing murder of his wife Anupama and son Varun. Though the learned Judge also convicted the accused no.1 under section 498 A IPC, did not record any separate punishment as accused no.1 is being convicted to suffer imprisonment for life.

3. Both these appeals, since arose out of the same Sessions trial and same evidence is required to be reappreciated, we heard both the appeals together as the learned counsel appearing for the accused in both the cases are same. We have scrutinised the record and re-appreciated the evidence with the assistance of the learned counsel on behalf of the accused and the learned A.P.P.

4. The prosecution story stated briefly as disclosed by the evidence on record is that the accused no.1 Navneet Balkrishna Naidu was married to the victim Anupama and out of the wedlock was born the other victim Varun. Even after the birth of the child, the wife was ill-treated for dowry and for similar demands by the accused persons and on or about 18th August 1997 the wife Anupama and the child Varun were found dead in the house. A complaint was lodged, investigation was conducted, accused persons were arrested and they were ultimately charged by the learned Sessions Judge, Pune of having committed murder of the two persons i.e. Anupama and Varun, and also for having treated them with cruelty they were also charged for offence under section 498 A of IPC. The learned Judge also framed charge under section 304 B of IPC against both the accused persons.

5. The prosecution has examined as many as eight witnesses to prove its case and the learned trial Judge on appreciation of the evidence as recorded by him, came to the conclusion of guilt of the accused persons and proceeded to convict them as mentioned above. Both the accused/appellants are represented before us by the learned counsel for the appellant, who contended that initially the police had recorded a case of suicide by

the wife and therefore a crime was registered under section 306 of IPC against the accused persons. However, after investigation, charge sheet was filed and the accused were charged under section 302 IPC also. According to the learned counsel, the evidence on record is grossly inadequate to sustain the conviction for murder or of unnatural death as contemplated by section 304 B of IPC. He pointed out several discrepancies which according to him, vitiated the order of conviction. The learned Prosecutor pointed out from the evidence on record that this evidence gives intrinsic proof of the fact that the injuries caused to the victim cannot cause by strangulation. The death is caused not by strangulation but by the injuries inflicted on the victim by the accused. According to the learned Prosecutor, it is impossible for any individual to hang oneself and another individual by the same rope. The entire evidence regarding hanging of the victim Anupama and Varun by the same rope is a concoction of the evidence by the accused to conceal the evidence of murder, which we have reappreciated in the light of the evidence on record.

6. P.w.1 Pitambaram is a translator, who has translated the writing of the victim Anupama as the

writing was in Tamil language. His evidence is however not very material for adjudication of the dispute raised before us. We have to appreciate the evidence in relation to commission of murder by the accused as alleged by the prosecution for which the contents of the writing are not of much significant.

7. P.w.2 Tirumalai is the father of the victim Anupama. He describes how the marriage took place and how soon thereafter started demands of dowry by the accused i.e. husband and mother-in-law of the victim. He tells the court that even after Varun was born on 29-05-1995 the dowry demands continue till he heard on 18th August 1997 about the death of his daughter and grandson. He then states that he immediately came to Pune, went to the spot, was shown the suicide note and therefore lodged a complaint that the death of his daughter, even if it is by suicide, was caused by the accused. Obviously he is not an eye witness and therefore his testimony is useful only for proving the fact of constant demand and torture for dowry by the accused right after the marriage.

8. P.w.3 Vinodini is the mother of the victim, who corroborates her husband on all material particulars and has deposed about the cruelty meted out to her

daughter by the accused persons. P.w.4 is a inconsequential witness, and is the sister of the victim who was out of India for most of the time. Her evidence is of no consequence.

9. P.w.5 Dhananjay is P.S.I. who initially received the report of accidental death in relation to the victims. He also recorded the complaint as filed by P.w.2 father of the victim. P.w.6 Sharad is a photographer who took photographs of the scene of offence as also of the dead bodies. His evidence proves the photograph and those photographs, in our opinion, as was rightly held by the learned trial Judge are the foundation of the evidence which if considered in its totality proves beyond doubt that the accused had committed murder of the victims. We will discuss this aspect elaborately little latter.

10. P.w.7 Dr. Prakash is the person who conducted the post mortem and has deposed that the death is caused by strangulation. He has also proved elaborately the several injuries which existed on the person of the victim Anupama and has ultimately stated that all those injuries were ante mortem.

11. D.W.No.1 Kumar is the defence witness who only states in the court that he saw the body hanging to the ceiling fan. Probably he was examined by the defence to show that it is really a case of suicide by hanging and therefore is not a homicidal death and that the accused were never guilty of doing any of these things.

12. The fact that death of both Anupama and Varun was not natural is established beyond doubt by the evidence of P.w.7. The only question which is left therefore is whether these deaths are suicide as initially claimed by the prosecution and then contended by the defence, or it is a murder committed by the accused nos.1 and 2.

13. Even if the entire evidence on record is accepted as what it is, it is very hard to believe that accused no.2 mother of the accused no.1, had at any time actively participated either for dowry demands or meted out cruelty to the victim. That she was residing with the accused is a fact which cannot be denied. But that fact by itself cannot be adequate to convict the mother for any of the offence. In our opinion, the prosecution has failed to prove any complicity of the accused no. 2 in the death of Anupama and Varun. Hence, we are of the opinion that the conviction of accused no. 2 as recorded by the learned trial Judge

under section 394 B is ill founded. There is no evidence that she was in any manner concerned with the death caused. There is no evidence to show that she actively participated in dowry demands and cruelty for fulfilling the same. In our opinion, therefore Criminal Appeal No.150/2001 is liable to be allowed.

14. In so far as the accused no.1 husband is concerned, there is ample intrinsic evidence on record which corroborates the claim of the prosecution that the accused no.1 committed murder of the victims and they did not meet death by suicide or by hanging. The hanging was farceur created by the accused no.1 to escape from the punishment of murder. The evidence on record is more than enough to prove that there was constant dowry demand and torture to the victim wife by the accused no.1. It is also undisputable that the death occurred within seven years of the marriage. It is also undisputable that the death is not natural. Even if it is assumed for the sake of consideration of the submission made, that the wife did commit suicide, suicidal death is not a death in natural circumstances and consequentially the husband was aware of the consequence following out of the punishment of suicide as contemplated by section 306 of IPC. In fact, the

scrutiny of the photographs as proved by P.w.6 and the injury report as proved by P.w.7 discloses that it was the accused who committed murder and created farceur that the wife hanged herself and the son because of the fact that she was unable to cope up with the present world. Those are the words supposed to be said in the suicidal note. It is pertinent to note that the suicidal note form part of a diary which was discovered at the instance of the father of the accused from the cupboard in the room where the bodies were hanging. It is improbable and therefore not acceptable that a person who wants to commit suicide after committing murder of her son, would take care of a writing and keep the diary in the cupboard. Photographs discloses that the body of the child was hanging with that of mother. The allegation is that mother killed the son. If it is a fact which we cannot accept to be the fact it is highly improbable, in fact it is in our opinion impossible, that a mother would kill her child and then create a show that the child also was part of the suicide attempt. Photographs as proved by the prosecution via P.w.6 speak volumes regarding how the crime has taken place. The photographs show the wife hanging to the ceiling fan with knot around her neck and other side of the rope having stressed her neck to the extent of its possible elasticity.

15. There are in all 5/6 photographs showing the position of the dead bodies. It appears that victim Anupama was wearing a saree at the time when the incident occurred. If she had committed suicide by hanging herself she ought to have killed the child first. If she has killed the child as alleged to have been done by her, there is no reason why she would have intended the child also died by hanging along with her. If she had decided to kill the child, she had no reason to make any show about it. However the photographs disclose that she and the child hung by the same rope. It will have therefore to be assumed that the wife first tied the rope around the fan, then tied it around her neck then tied it around the neck of the child strained the child infact, then jumped from the cot and in the process pushed the cot towards the door. However, such is not the case as is disclosed by the photographs on record. The photographs reveal that the neck of the victim Anupama is strained by the rope to which she hung. But her one leg is resting on the floor and the other is resting on the bed. In our opinion, it is impossible to accept the situation that the wife hanged herself and the child by one rope and both of them tied, then the wife jumped. In fact any theory regarding jumping, after rope is tied to the

neck is denied by the factual situation by the photographs which show that one leg resting on the ground and the other resting on the bed. In such a situation it is impossible to comprehend how the child would die by strangulation when the force of the body of the victim Anupama is used in herself by strangulation.

16. We have already observed above that it is difficult to believe that the mother would kill her son even if she is tortured endlessly by her husband or in-laws for dowry. Even the full knowledge of the fact that after her, the child may suffer in the world, would not be sufficient in our opinion, for a mother to kill her child. Even if such contingency is accepted, it is impossible to believe that she has chosen to kill the child and then went to the extent of fabricating evidence to show that the death of both was by hanging. Such hanging of two persons by one rope as disclosed by the photographs in our opinion, is impossible. Death must have occurred differently and independently. That brings us to consider the evidence of P.w.7 Dr. Prakash who deposed that several injuries were found on the person of the victim wife. The injuries are as follows:

1) Injury on the right thigh.

2) Injury on the left thigh.

3) Right side of the heart filled with blood

4) Bleeding injury on the vaginal orfice

If the theory of wife committed suicide is to be accepted, there is no explanation of whatsoever of how these injuries are caused. It is impossible that the wife would cause such injuries to herself and then commit suicide. However the injuries are consistent with a serious assault by the husband, causing injuries and then hanging her. The child obviously was there in the room, when this incident occurred and was therefore killed by the accused, as the child was the sole witness to the brutal murder of his own mother at the hands of his father.

17. The medical evidence fully corroborates the evidence led by the prosecution. Exh.11 is one such piece of evidence, which is spot panchanama. It describes the state of room in which the bodies were found. It describes how the bed was there in the room when one leg of the deceased was on the bed and the other was on the floor and both the legs of child were on the floor. It also discloses the fact that the door

of the room where the bodies were found could not be opened because the cot was very near to the door. This aspect is further corroborated by the photographs on record. If the wife has used the bed for putting the rope around the fan so that she could hang herself and has kicked the cot and hanged on the rope, then how her leg from knee downward continue on the bed, cannot be explained. How the wife tied the rope around the child's neck and killed the child and thereafter hanged herself in the fashion in which it is shown in the photograph cannot be explained. All this can be created or constructed by someone else who is the author of the killing and that someone else as will be seen from the circumstantial evidence was none else than the accused no.1. The doctor has categorically found and has stated so in his deposition that at any cost the death of Varun cannot be suicidal and must be homicidal. The homicide having been committed by the wife is improbable from the circumstances, which intrinsically proved that the death did not occur by hanging. It is impossible to believe that a mother would kill her child in some other way and make it look like hanging and has chosen to have taken her own life.

18. Then there is evidence of Defence witness No.1 Kumar who states that the door of the room where the

bodies were hanged could not be opened because of the cot in the room (which was opened by police) to facilitate the entry of a single man. This goes to show that the bed must have been pulled towards the door, and therefore the door could not be opened and the deceased after committing suicide could not move the bed for closing the door for facilitating her to commit suicide in the manner alleged or seen in the photograph.

19. Then there is evidence of defence witness no.2 who is the sister of the accused. She has stated about the incident in the following words.

> In the night of 17-8-1997 and 18-8-1997 I got up from the sleep by hearing the cry of the accused no.1. Myself and my parents and a tenant came on the ground floor. We found the accused no.1 standing on the road and he was crying. He was standing nearby the window of the bed room of his house. On inquiry he said us that he was unable to see his wife and child for want of light in the bed room. We have seen through the window and found Anupama in a hanging condition to a fan. We could not noticed the son Varun."

20. There is no reason why the evidence of this witness should be disbelieved. She says that she saw the accused no.1 standing near the window of the bed room where the body was hanged, crying and saying that he could not see his wife and child because there was no light. But in the same breath the witness says that she saw the deceased through window in a hanging condition. The evidence of this witness though brought by the defence to show that accused was not involved, is a clinching circumstance in the chain of circumstances to come to the conclusion that it was the accused who caused the death. He was found standing outside the window saying that he could not see the room because of paucity of light, but the witness said that people entered the room and found that son and mother hanged in the same rope. If the accused no.1 who according to the defence witness no.1 was standing outside the window and was crying that he could not see his wife and as to what was happened in the room and the only answer is he was so crying because he had full knowledge and therefore we have no doubt that he is the person who caused the death. This evidence clinches the entire issue.

21. To summarise the evidence of P.ws. 2 and 3 it proves beyond doubt that there was torture for dowry by the accused. The accused was standing outside the room where the hanging had occurred, complaining that he could not see his wife and child when his sister came there and saw the wife hanging. The evidence of doctor that there were physical injuries on the person of the victim, which had no concern with her death, apart from the injuries which caused her death, these injuries are unexplained except by the irresistible conclusion that it was the accused who caused it. Moreover the photographs discloses that when the victim was hanged by rope, her blouse was out of her shoulder completely disclosing the brassiers inside. Then the injury on the thigh or private part cannot be occurred by hanging and the last person to be seen with the victim was the accused no.1 as deposed by his own sister defence witness no.2.

22. The fact that the child was seen hanged by the rope is grossly inconsistent with the theory and the contention of the accused that the wife murdered the child and created a farceur. In fact from the photograph it is apparent and in our opinion is duly proved by the prosecution that it was the accused who committed the murders and created a farceur that the

wife committed suicide after killing the child writing a suicide note and keeping it in the cupboard. It is pertinent to note that no writing was found at the instance of the father of the accused because it was in the cupboard. How the father of the accused and the accused himself know that there is a note and it is in the diary and the diary is in the cupboard. It is a clear case where a show is created that the wife committed suicide and a report accordingly is lodged with a possible hope that the accused may succeed in the case.

23. The learned trial Judge has given cogent reasons for coming to these conclusions for accepting the reasons and we have given above the additional reasons why we affirm the finding of death by murder by the accused. We have already quoted above that the evidence is grossly inadequate in so far as involvement of the mother is concerned. In the result therefore the Criminal Appeal No. 150/01 filed by the mother is allowed. The conviction and sentence is set aside. Since she is on bail, her bail bonds are cancelled.

24. Criminal Appeal No.172/01 filed by the accused no.1 is dismissed.

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